

REMARKS

This application has been reviewed in light of the Office Action dated June 9, 2006. Claims 1-12 and 36 are pending in this application, with Claims 1 and 36 being in independent form. Claim 35 has been canceled in this Amendment thereby rendering its double patenting rejection moot. Claim 8 has been amended to merely correct an informality and does not narrow the scope of the claim. Favorable reconsideration is respectfully requested.

Applicants gratefully acknowledge the allowance of independent claim 36 and the indication that claims 6, 7, 9, 10 and 12 would be allowable if not dependent upon a rejected base claim. Applicants have not rewritten independent claim 1 for the reasons given below, i.e., claim 1 is believed to be allowable.

The Office Action objected to the drawings under 37 C.F.R. § 1.83(a) as not showing every feature of the invention specified in the claims. Applicants carefully reviewed the drawings and specification, and submit that the specification has now been amended and a substitute specification (marked-up and clean version) is submitted herewith. The substitute specification has been amended, as recommended by the Examiner to correct various informalities. No new matter has been added to the specification.

Figure 1 has been amended to illustrate the feature of an "audio converter" as recited in claims 6-12. Applicants submit that the objection to the drawings has been remedied, and its withdrawal is therefore respectfully requested.

The Office Action objected to claim 8 because of informalities. Applicants have now corrected the word "the" to --a-- as kindly noted by the Examiner in the Office Action. It is believed that this objection has been obviated, and its withdrawal is therefore respectfully requested.

The Office Action rejected claims 1-5, 8, 11 and 35 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,175,871 (Schuster et al.) in view of U.S. Patent No. 6,438,105 (Qarni et al.). Applicants respectfully traverse this rejection.

Initially, with regard to claim 35, Applicants submit that this rejection is moot in light of its cancellation.

Applicants request that the Examiner consider the following comments related to the prior art cited in the Office Action.

Firstly, in support of Applicants' submissions, the Examiner's attention is drawn to the MPEP guidelines at § 2143 "Basic Requirements of a Prima Facie Case of Obviousness" which states the following:

"...three basic criteria must be met. First, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, not in the Applicant's disclosure. *In re Vaexk*, 947 F.2d 488, 20 USPQ2d 1438 (Fed Cir, 1991)."

Applicants submit that neither Schuster nor Qarni appears to teach each and every claim limitation of at least claim 1-that is, they do not teach or suggest the step of:

"...overlapping the audio frames by at least one for each UDP packet."

As noted by the Examiner, Schuster is entirely silent in regard to the use of UDP packets. On the other hand, while Qarni relates to a protocol for selectively retransmitting UDP packets within frames, Qarni appears to teach away from having frames overlapped by at least one for each UDP packet. For instance, at column 2, lines 56-65 of Qarni, it states that:

"Within each information frame there may exist one or more redundant facsimile data packets...if the networked does not exhibit choppy behavior, then the dynamic redundancy window is reduced such that no redundant packets are transmitted."

This point is again reiterated at column 8, lines 42-45 of the Qarni citation as follows:

"If the network 22 does not loose [sic] packets the dynamic redundant window 72 size is reduced to one primary IFP/FDP packet per one information frame, and no redundant packets are transmitted in each frame."

Thus, it would be apparent to a person of ordinary skill in the art that the Qarni citation teaches a transmission protocol that is fundamentally different to the embodiment of the present invention as recited in Claim 1. In particular, the protocol described in Qarni involves dynamically varying the number of redundant packets which are retransmitted in each frame by reference to the extent of "choppy behavior" detected in the network. Clearly, in some instances, there will be no redundancy packets transmitted (i.e. No "overlap" in

frames as stated at column 2 lines 62-65) at all which is entirely at odds with the express claim limitation of claim 1 in requiring that the each audio frame is overlapped by at least one for each UDP packet. Therefore, since all the claim limitations of claim 1 have not been taught or suggested by the cited art references, when considered separately or in combination, Applicants submit that Claim 1 is patentable over the cited prior art.

Notwithstanding the absence of each and every claim limitation of claim 1 from the citations, even if Qarni did teach that audio frames are overlapped by at least one for each UDP packet, which is not the case, Applicants respectfully suggest that it would be erroneous to assume that a person of ordinary skill in the art would readily seek to combine the teachings of Qarni with Schuster so as to render the embodiment of the present invention as recited in claim 1 as being obvious. In this regard, Applicants note that it is not readily apparent from the Qarni citation that it would be considered directly relevant to addressing the problem at hand-that is, Qarni, is primarily directed towards a reliable internet protocol for facsimile transmissions as opposed to audio transmissions. Audio and text based communications involved quite distinct technical problems associated with transmission and it is unlikely that a person skilled in the art would readily seek to read together, let alone combine the two references.

Furthermore, the failure to overlap each frame in Qarni by at least one for each UDP packet is a deliberate design choice intended to provide a "reliable" transmission protocol which does not unduly burden the network bandwidth (see, e.g., column 2 lines 8-9). Because Qarni teaches that at certain times, no redundant packets are transmitted via the network so as to conserve the network bandwidth, this would discourage rather than encourage a person of ordinary skill in art from even considering overlapping audio frames by at least one for each UDP packet because to do so would place an increased burden upon the network bandwidth.

Furthermore, in accordance with § 2143.01 of the MPEP guidelines, given that any combination of Schuster and Qarni would produce an "unsatisfactory result" insofar as being able to implement the claimed invention, there would be an absence of motivation for a person of ordinary skill in the art to consider combining Schuster and Qarni.

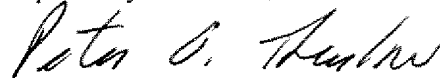
Thus, in view of the preceding remarks, Applicants submit that a prima facie finding of obviousness cannot properly be sustained in respect of claim 1 in view of the relevant MPEP guidelines as a person of ordinary skill in the art would not be able to combine non-existent integers within the citations so as to render the claimed invention as

being obvious. Furthermore, there is no apparent motivation evident from the cited documents which would support the finding of a motivation for a person of ordinary skill in the art to combine Schuster and Qarni. By virtue of their dependency upon claim 1, dependent claims 2-5, 8, and 11 are also considered to not be obvious, and the rejection raised against these claims should also be withdrawn accordingly. Similar arguments as outlined in respect to claim 1 are applicable to independent method claim 35; however, the obviousness rejection against claim 35 is now moot in view of the cancellation of this claim from the present application in order to overcome the double patenting rejection.

In light of the above amendments and remarks, Applicants respectfully requests that the Examiner reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney if a telephone call could help resolve any remaining items.

Date: September 11, 2006

Respectfully submitted,



47,138

Peter G. Thurlow

(Reg. No.)

JONES DAY

222 East 41st Street

New York, New York 10017

(212) 326-3694